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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,809

07/02/2007

Hans Walter Haesslin

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10/06/2008

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PATENT AND TRADEMARK DEPARTMENT
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EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

10/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,809	Applicant(s) HAESSLIN ET AL.	
	Examiner KRISTIE L. BROOKS	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/12/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Claims 1-19 are pending.

Claim Objections

2. Claims 5, 9, 11-14, 18 and 19 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim can not depend from another multiple dependent claim. See MPEP § 608.01(n).

Priority

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Claim Rejections – 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "derivative thereof." However, it is unclear as to whether the "derivative" is a structural or functional derivative and how much derivation is acceptable to maintain activity for controlling weeds. As defined in Merriam-Webster's Collegiate® Dictionary (cited in 892 form), a derivative is a chemical

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substance related structurally to another substance and theoretically derivable from it, thus rendering "derivative" indefinite and unclear.

Claim 1 recites, "with the exclusion of formulations comprising all of a tristyrylphenol-ethoxylate having 6-14 mol ethoxylate, in non-ionic form, and a tristyrylphenol-ethoxylate having 14-18 mol ethoxylate in form of its sulphate or phosphate, in anionic or acid form, and a dialkyl-sulfosuccinate salt."

It is unclear what Applicant intends by this exclusion. It is unclear if there is an additional formulation present, since Applicant recites "formulations", or if this is a typographical error. It is also unclear if the formulation excludes any tristyrylphenol-ethoxylate having 6-14 mol ethoxylate, in non-ionic form, etc., or if the formulation excludes that the tristyrylphenol-ethoxylate having 6-14 mol ethoxylate, in non-ionic form, etc., cannot be the only aromatic ethoxylate present in the formulation.

Claims 2-19 are rejected for being dependent on a rejected claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-19 are rejected under U.S.C. 103(a) as being unpatentable over Hopkinson et al. (US 2007/0225169).

Applicant claims a suspoemulsion formulation, free from polymeric stabilisers having a molecular weight of between 10,000 and 1,000,000 daltons, comprising: (i) a continuous phase, (ii) an HPPD-inhibiting herbicide insoluble in the continuous phase, (iii) a chloroacetamide, and (iv) one or more aromatic ethoxylate compounds or derivatives thereof.

Determination of the scope and content of the prior art (MPEP 2141.01)

Hopkinson et al. teach a suspoemulsion composition comprising 2-(2'-nitro-4'-methylsulphonylbenzoyl)-1,3-cyclohexanedione (mesotrione) (HPPD-inhibiting herbicide) having a particle size of less than 1 micron (see the abstract). One embodiment of the suspoemulsion formulation comprises a (a)

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continuous aqueous phase, (b) a dispersed emulsion phase comprising at least one liquid water-soluble active ingredient, and an emulsifier, and (c) mesotrione, as a dispersed solid phase that can be dispersed in the aqueous phase (see page 2 paragraphs 22-27). The liquid water-insoluble active ingredients include herbicides, such as acetamides (i.e. metolachlor), and antidotes or safeners (see page 2 paragraph 28-30). The formulations may also contain solid water-soluble active ingredients such as triazine herbicides or isoxaflutole (see page 3 paragraph 34). The formulations may contain anionic cationic or non-ionic surfactants (see page 3 paragraph 39). Exemplary surfactants include polyarylphenol polyalkoxyether sulfates and phosphates (e.g. distyrylphenol polyethoxyether sulfate, etc.) (see page 3 paragraph 42). The formulation may contain stabilizing metal salts such as calcium, magnesium, iron or copper salts (see page 5 paragraph 62).

Hopkinson et al. also teach a method for controlling weeds in crops comprising applying the instant suspoemulsion composition to the desired area (e.g. seed, seedling, etc.) (see page 6 paragraph 65-66).

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Hopkinson et al. do not exemplify a suspoemulsion with the instant components in claim 1.

**Finding of prima facie obviousness Rational and Motivation (MPEP
2142-2143)**

However, one of ordinary skill in the art would have been motivated to make a suspoemulsion with the instant components because Hopkinson et al. suggests the instant components are useful in making stable suspoemulsion formulations that are useful for controlling weeds.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make a suspoemulsion formulation with the instant components because the instant components provide stable suspoemulsion formulations, which will be beneficial to the user when applied to weeds.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.

Conclusion

7. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Mina Haghighatian/
Primary Examiner, Art Unit 1616